



भारत का राजपत्र

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सं. 3]

नई दिल्ली, शनिवार, जनवरी १६, १९८८/माघ १०, १९०९

No. 3] NEW DELHI, SATURDAY, JANUARY 16, 1988/MAGHA 10, 1909

इस भाग में भिन्न पृष्ठ दस्ता वी जाती है जिससे कि यह असार संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

(संघ राज्य और प्रशासनों को छोड़कर) केन्द्रीय नियंत्रितों द्वारा जारी किए गए सांबिधिक आदेश और अधिसङ्ख्याएँ
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 12 जनवरी, 1988

आ. अ. 13 ---1985 को निर्वाचन अर्जी संख्या 4 में आनंद प्रदेश के उच्च न्यायालय के तारीख 9-12-1987 के निर्णय को लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग इसके द्वारा प्रकाशित करता है।

[संख्या 82/आ.प्र.-लौ.स./4/85]

आदेश से,
टो. मी. सिंघल, अवर सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 12th January, 1988

O.N. 13.—In pursuance of section 106 of the Representation of the People Act, 1951, (43 of 1951) of the Election Commission Hereby publishes the judgement of the High Court of Andhra Pradesh dated 9th December, 1987 Election Petition No. 4 of 1985.

[No. 82/AP-HP/4/85]

By Order,
T. C. SINGHAL, Under Secy.

IN THE HIGH COURT OF JUDICATURE, ANDHRA
PRADESH AT HYDERABAD
(ORIGINAL JURISDICTION)

Wednesday the Ninth day of December One Thousand Nine
Hundred and Eighty Seven
PRESENT :

The Hon'ble Mrs. Justice Amateshwari.

Election Petition No. 4 of 1985

BETWEEN

Thummalapalli Rulla Reddy, ...Petitioner.
AND

M. Raghumma Reddy ...Respondent.

Petition under sections 80 & 81 of the Representation of the People Act, 1951 praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to (1) to declare the election of the respondent to the said 41—Nalgonda Parliamentary Constituency as void on the grounds mentioned supra and (2) to direct the respondent to pay the costs of this petition.

For the Petitioner—Mr. K. Venkataramaiah, Advocate.

For the Respondent—Mr. B. V. Subbaiah, Advocate.

The Court delivered the following judgment :

The Petitioner challenges the validity of the election of the respondent to the Nalgonda Parliamentary Constituency held

on 27th December, 1984. The petitioner is a voter in 41, Nalgonda Parliamentary Constituency.

A Notification was issued for electing candidates to the Lok Sabha some time in December, 1984. Nominations were filed on 6th December, 1984. The respondent along with 6 others filed their nominations. The nominations were taken up for scrutiny on 7th December, 1984. The election was held on 27th December, 1984. Votes were counted on 28th December, 1984 and the respondent was declared elected. This Election Petition was filed on 11th February, 1985. The petitioner challenges the validity of the said Election.

Briefly, the averments are that the respondent is a Government servant on the date of filing his nomination, that he was working as an Assistant Agricultural Officer in the Agricultural Department of Government of Andhra Pradesh in Mahaboobnagar district and as a Government servant he is not entitled to file his nomination, that inspite of an objection being raised by one of the contesting candidates namely, Sri D. Damodar Reddy that the respondent is a Government servant, his nomination was accepted. The petitioner also averred that the respondent misappropriated Government funds and an enquiry was pending on the date of election and the enquiry is still pending. He says that for all purposes, the respondent is a Government servant both on the date of filing of nomination and on the date of election and even subsequently and therefore, he is disqualified to contest the election.

The respondent filed a written statement denying the allegation. In the written statement, it is stated that he was formerly an Agricultural Officer in the Directorate of Agriculture, that he resigned his job and his resignation was accepted with effect from 1st March, 1983 and since that date he is not in service of the State Government and his resignation was rightly accepted. He denied the averments relating to misappropriation and pendency of enquiry against him. He stated that his nomination paper was validly accepted and that he won the election with a massive majority of 1.15 lakhs against the Congress (I) candidate Damodar Reddy. He added that no objection was taken by anybody before the Returning Officer at the time of scrutiny. Alongwith the written statement he filed, the proceeding of the Director of Agriculture dated 25th October, 1983 accepting his resignation with effect from 1st March, 1983 Ex. B1. Later he filed a certificate (Ex. B2) dated 21st June, 1985 from the Director of Agriculture, Andhra Pradesh, Hyderabad to the effect that the respondent's resignation was accepted with effect from 25th October, 1983 and there are no enquiries relating to misappropriation pending against him.

On these pleadings, the following issues are settled for trial:

- (1) Whether the respondent was a Government servant in the Agricultural Department of Government of Andhra Pradesh and as such was holding an office of profit on the date of filing his nomination to the Nalgonda Parliamentary Constituency?
- (2) If so, whether the nomination filed by him is valid ? and
- (3) Whether the election of the respondent to the Nalgonda Parliamentary Constituency is liable to be declared as void as he suffers a disqualification in as much as he was a Government servant on the date of filing of his nomination and the date of election ?

Two witnesses were examined on behalf of the petitioner. P.W.1 is the Director of Agriculture, Andhra Pradesh, Hyderabad and P.W.2 is the petitioner himself. Exs. A-1 to A-17 are marked for the petitioner. The respondent examined himself as R.W.1 and marked Exs. B-1, B-2 and B-3.

All the three issues can be dealt with together. The admitted facts are that the nomination papers for election to the Nalgonda Parliamentary Constituency were filed on 6th

December, 1984. The respondent along with others contested. The nominations were scrutinised on 7th December, 1984. The respondent's nomination was accepted, Election was held on 27th December, 1984. Votes were counted on 28th December, 1984 and the respondent was declared elected. The election petition was filed on 11th February, 1985.

The main challenge to the election is that the respondent suffers from a disqualification as contemplated under Article 102 of the Constitution of India i.e., that he holds an Office of profit under the Government of Andhra Pradesh since he was working as an Assistant Agricultural Officer in the State service on the date of his filing of nomination and also on the date of election.

Section 100 of the Representation of the People Act, 1951 is as follows :

"100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-Section (2) of the High Court is of opinion :—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
- (b)
- (c)
- (d)
- (2)

then the High Court may decide that the election of the returned candidate is not void."

So, the main question for consideration is whether the respondent was disqualified to contest the election. Section 100(1)(a) speaks of the disqualification on the date of election. But in this case it is not of such relevance as the case of the respondent is that he suffers no disqualification either on the date of filing the nominations or on the date of election. It is not disputed that a person who is in service of Government of India or of State Government is a person who holds an Office of Profit. It is not also in dispute that this is a question which falls for determination in an Election Petition under Sections 80 and 81 of the Representation of the People Act. While it is the case of the petitioner that the respondent was in service of the State of Andhra Pradesh, working as an Assistant Agricultural Officer on the date of filing the nomination and also on the date of election, it is the case of the respondent that he resigned his job and the same was accepted by the competent authority with effect from 1st March, 1983, long before the election i.e., 1 year 9 months before the election.

Ex. A-1 is the Service Register relating to the respondent. It is produced by P.W.1 the Director of Agriculture, Andhra Pradesh, Hyderabad. It shows that the respondent joined the State service on 13th March, 1973 as Assistant Agricultural Officer. Ex. A-2 is an entry at Page No. 10 which indicates that he joined duty at Hyderabad on 26th October, 1978 and he worked there upto 2nd August, 1979. Ex. A-2 further indicates that he joined duty in F.T.C. Office, Hyderabad on 26th October, 1978 and he worked there upto 2nd August, 1979. This is also spoken to by P.W.1, the Director of Agriculture, Andhra Pradesh, Hyderabad. Thereupon, he reported in the Office of the Director on 2nd August, 1979 and Ex. A-3 shows that he was sanctioned leave from 3rd May, 1981 to 2nd November, 1981. It is evident from Ex. A at page 15 of the Service Book that after 2nd November, 1981 he was on Farm Consultancy Service from 3rd November, 1981 to 2nd November, 1982.

It is the case of the respondent that before the expiry of his leave period i.e., 2nd November, 1981 he applied for extension of leave and to continue him in the Farm Consultancy service. However, it does not appear from the record

that any leave was granted or whether he made any such application. The respondent applied on 1st December, 1982 for voluntary retirement with effect from 1st March, 1983. The Office gave a reply dated 7th March, 1983 stating that he was not eligible for voluntary retirement as he has not put in 20 years of qualifying service. On 4th June, 1983 he requested the department to accept his resignation with effect from 1st March, 1983 for the reasons already given. It is Ex. A-6. In Ex. A-6 we find a reference to his representation dated 1st December, 1982 and the Memo. No. Estt. I/1046/83 dated 7th March, 1983. On 16th June, 1983 the Government gave a reply Ex. A-7 asking the respondent to produce two surety bonds in the prescribed proforma on a stamp paper worth Rs. 22.50 Ps. Obtained from two Officers not below the rank of an Agricultural Officer to take further action immediately in the matter. Ex. A-7 refers to the request of the respondent dated 4th June, 1983 asking the department to accept his resignation. The respondent has furnished the surety bonds as required under Ex. A-7. On 22nd June, 1983 the respondent submitted surety bonds from two Agricultural Officers as desired. He requested that he may be relieved from the post with retrospective effect as requested by him in his earlier representation. This is Ex. A-8. Ex. A-9 is the surety bond executed by two Officers of the Agricultural Department. Ex. A-9(a) is the signature of the respondent. Ex. A-10 is a letter asking the respondent to submit a certificate to the effect that he is fully aware of the consequences of the resignation for taking further action. Ex. A-11 is a letter addressed to the respondent stating that he was aware of the consequences and that he signed the same on his own accord. Ex. A-12 is the proceedings of the Director of Agriculture dated 25th October, 1983 to the effect that the resignation of the respondent was accepted with effect from 1st March, 1983. This is also marked as Ex. B-1. This proceeding is dated 25th October, 1983 and it was issued under the orders of Sri J. Rambabu, I.A.S., Incharge Director of Agriculture, Hyderabad. Ex. A-5 is an entry at Page 14 of the Service Register that the resignation tendered by the respondent was accepted with effect from 1st March, 1983, by proceedings Estt. II(2) 3526/83, dated 25th October, 1983.

The aforesaid documents clearly show that the respondent submitted a representation in the first instance to permit him to retire voluntarily and on being informed that he does not possess the requisite qualification namely, 20 years of qualifying service, he addressed a communication dated 4th June, 1983 Ex. A-6 to accept his resignation for the reasons already explained in his representation dated 1st December, 1982. In this the subject is mentioned as "voluntary retirement request not considered—acceptance of resignation requested". He refers to his representation dated 1st December, 1982 and the Memo. of the Department dated 7th March, 1983 received by him. Ex. A-6 clearly establishes that his earlier letter may be treated as a letter from resignation and the same may be accepted with effect from 1st March, 1983. Pursuant to this letter, the respondent was called upon to furnish two bonds in the prescribed proforma from two Officers not below the rank of Agricultural Officers. Ex. A-8 shows that he furnished the surety bonds of two Officers in which it is said that they stand as guarantee for the payment to Government of any amount which may be ultimately found payable by the respondent in respect of any excess paid to him by Government by way of over payment of pay allowances, leave salary, advances for conveyances, house buildings or other purposes and any losses caused to the Government while discharging his duties under the Government. It is after this that the Director of Agriculture accepted the resignation with effect from 1st March, 1983 by his proceedings dated 25th October, 1983 as evident from Ex. A-12. It is also recorded in the Service Register that the respondent's resignation was accepted with effect from 1st March, 1983.

The Director of Agriculture, who is examined as P.W.-1 had testified to all these facts with reference to records. He also issued a certificate Ex. B-2 dated 21st June, 1985 that the resignation of the respondent who was an Agricultural Officer of the department was accepted with effect from 1st March, 1983 and there are no disciplinary cases or misappropriation cases pending against him.

It is submitted by Mr. K. Venkataramaiah, the learned Counsel for the petitioner that Ex. A-12 (Ex. B-1) the proceedings dated 25th October, 1983 accepting the resignation is neither true nor valid. He submits that it is manipulated document. Ins is a very wild allegation without any basis. Ex. A-12 shows that it was issued from the Directorate of Agriculture, it bears the dated 25th October, 1983, it refers to the representation of the respondent dated 4th June, 1983 (Ex. A-6) asking the department to accept his resignation, it also refers to the Memo. of the department dated 16th June, 1983 (Ex. A-7) asking the respondent to produce the surety bonds in the prescribed proforma, it further refers to a representation of the respondent dated 22nd June, 1983 (Ex. A-8) that he was filing the surety bonds as required by the department and that he may be relieved from the post. The Memo is as follows :—

"In the circumstances stated in the reference cited, the resignation tendered by Sri M. Raghuma Reddy, A.O. is hereby accepted w.e.f. 1st March, 1983.

(Under the orders of Sri J. Rambabu, I.A.S., I/C. Director of Agriculture, Andhra Pradesh, Hyderabad).

Sd/-

M. Ad kesavulu,
for Director of Agriculture."

Ex. A-12 is the original in manuscript and its finds a place in the file marked as Ex. A-16. Exs. A-6 to A-15 are also marked from this file. There are absolutely no suspicious features about this file. It is a part of official record. The evidence of P.W.1 the Director of Agriculture, who took charge of the post on 26th October, 1983 shows that J. Ram Babu was the Director on 25th October, 1983 when the proceedings were issued. Ex. A-12 was issued under his orders. The Director of Agriculture is the Competent authority to accept the resignation and this position is not disputed.

It is urged by Mr. K. Venkataramaiah that Ex. A-12 is signed only by the Superintendent and it is dated 27th October, 1983 and hence there is some suspicion about this document. The date on which the proceedings are issued to the party is 27th December, 1983 and it contains the signature of the Superintendent. But the date on which the resignation was accepted as on 25th October, 1983 as evident from the proceedings. The resignation is accepted as evident from the Note file Ex. B-3 which contains a noting to the effect "Yes". The Note file shows that a note was put up that before accepting the resignation, he may be directed to furnish surety bonds. The Note file further contains a note that in view of the surety bonds furnished by him, his resignation may be accepted from 1st March, 1983. The draft was put up for approval. There is an endorsement which says "accepted". The draft proceedings were put up for approval and the same were issued on 25th October, 1983. Ex. A-12 corresponding to Ex. B-1 and B-3 the Note submitted pursuant to a decision from this Court file relating to the acceptance of resignation establishes beyond any doubt that the respondent's resignation was accepted with effect from 1st March, 1983 after following all the formalities. Ex. B-3 note file is an Official file maintained by the Office of the Director of Agriculture and a look at it inspite confidence.

The Director of Agriculture, who was examined as P.W.-1 deposed that the respondent requested for voluntary retirement with effect from 1st March, 1983 and after being informed that he was not eligible and that he can resign if he chooses to, the respondent represented on 4th June, 1983 that his request for voluntary retirement may be taken as withdrawn and his resignation may be accepted with effect from 1st March, 1983 and it is for that reason, the Director of Agriculture accepted the resignation with effect from 1st March, 1983. He admitted to have issued the certificate Ex. B-2 dated 21st June, 1985 that there are no disciplinary cases pending against the respondent and that the respondent resigned from the job with effect from 4th February, 1983. He further stated that Ex. B-1 was issued under the orders of the

then Director of Agriculture, Sri Rambabu. He also stated that after the approval of the Note by the Director, proceedings are issued by the Superintendent in the name of the Director. Respondent as P.W.1 spoke to all these facts. The documentary evidence coupled with the evidence of P.W.1 and P.W.2 leave no room for any doubt that the respondent's resignation was accepted by the department and he was not a Government employee after 1st March, 1983.

Mr. K. Venkataramayya submitted that the proceedings were signed by the Superintendent on 27th October, 1983 and the smudging of the ink on the year throws a lot of suspicion. The original in manuscript is Ex. A-12. The date is clearly mentioned as 25th October, 1983. Further, the signature by the Superintendent on 27th October, 1983 would show that the proceedings were of 25th October, 1983 and it could not have been of a later year. I find no substance in this contention.

It is then submitted that Ex. A-5 the entry in Ex. A-1 the Service Register is also suspicious. Ex. A-5 is an entry made by the Assistant Accounts Officer in the Service Register of the respondent on 6-1-1984 that the resignation tendered by the respondent was accepted with effect from 1st October, 1983 as per proceedings dated 25th October, 1983. This entry appears at Page 14 of the Service Register. Page 15 of the Service Register contains some other entries relating to the service record of the respondent regarding the period of leave and the permission given to him to take up farm consultancy service. From this it is sought to be argued that the entry was made subsequently. I do not see any adverse inference has to be drawn from these facts. Ex. A-5 is only an endorsement made by the Assistant Accounts Officer made in the Service Register.

It is submitted by Mr. K. Venkataramayya that Exs. A-13 to A-17 shows that the respondent was still in Government service. Ex. A-13 is a communication from the BDO Amangal Panchayat Samithi dated 8th May, 1984 addressed to the Joint Director of Agriculture, Mahaboobnagar requesting to recover a sum of Rs. 491.60 Ps. towards an excess claim made by the respondent for the year 1976-77. Ex. A-14 is a letter addressed by the joint Director of Agriculture, Mahaboobnagar dated 17th October, 1985 to the Director of Agriculture stating that an amount of Rs. 22,946 has to be settled by the respondent as per the audit objections in respect of department and pertaining to Panchayat Samithis of Amangal and Kalwakurthy for the period during 1972 to 1978. Ex. A-15 is a Memo issued from the Directorate of Agriculture dated 6th November, 1985 to the Joint Director of Agriculture, Mahaboobnagar to fix responsibility on persons concerned and to report full particulars of regularisation of recoveries of amounts within a month besides taking disciplinary action against the concerned. This memo was with reference to issue of no due certificate to the Respondent. Ex. A-16 is the entire file. Exs. A-13 to A-15 relate to some internal correspondence between the Officers of the Agricultural Department with regard to certain amounts alleged to be due and which are recoverable from the respondent. The respondent in his evidence as P.W.1 denied that he has no knowledge about these Memos and he was not served with any of them or any other Memo pursuant to that. P.W.1 also does not say that any notices were issued to the respondent

pursuant to Exs. A-13 to A-15. These documents do not in any way show that the respondent was still in service. They are with regard to recovery of amounts. It is precisely for this purpose the surety bonds were taken at the time of accepting his resignation to ensure collection of amounts if any amount is found to be ultimately due. The disciplinary action referred to in Ex. A-15 is with reference to the persons concerned after determining who they are. These documents do not in any way dilute the significance of the proceedings dated 25th October, 1983 accepting the resignation of the respondent.

The Petitioner is examined as P.W.2. He stated that he is a registered voter in Nalgonda Parliamentary constituency. He filed the Election Petition on the ground that the respondent was in Government service at the time of the election. But he admitted in the cross-examination that the respondent won with a majority of more than two lakhs, and that he does not know whether the respondent resigned his job and that he also does not know whether on the date of nomination or at any time earlier, the respondent resigned his job. It was suggested to him that this petition was filed at the instance of Damodar Reddy, the contesting candidate. He said that he consulted Damodar Reddy before filing the Election Petition. He further stated that he came to know that Raghuma Reddy resigned his job from 1st March, 1983 from the written statement filed by the respondent. I have no doubt in my mind that this petition was filed at the instance of Damodar Reddy. The petitioner has not even taken care to verify whether the respondent was in Government service at the time of filing of the nomination or the election. He simply filed the Election Petition on trivial grounds.

It is lastly contended that the then Director of Agriculture Sri Rambabu, who accepted the resignation has not been examined though the respondent in his evidence stated that he would examine him and therefore, an adverse inference has to be drawn. At the time when the list of witnesses was furnished, the respondent has not cited Sri Rambabu as his witness. When the respondent was being examined, the petitioner's Counsel asked him whether he would examine Sri Rambabu on his side. The respondent said that he would. But he did not examine him. The Director of Agriculture is an official. He can only speak with reference to record. Sri Rambabu was the Director of Agriculture only upto 25th October, 1983.

He was working in some other capacity. Later the trial commenced in 1985. The person who was the Director at that time was examined and he gave evidence with reference to record. An official witness who was not the concerned official at the time of trial need not be called to the witness as any official can speak only with reference to the record. No question of drawing an adverse inference arises in such a case.

In view of the above discussion, I hold that the respondent was not holding any office of profit under the State Government on the date of filing the nomination and also on the date of election. I, therefore, dismiss this Election Petition with costs. Advocate's fee Rs. 1,500.

ELECTION PETITION NO. 4/85

APPENDIX OF EVIDENCE

LIST OF WITNESS EXAMINED

FOR PETITIONER

1. Palam Ramakantha Reddy.
2. Thonmalapalli Pilla Reddy.

FOR RESPONDENT

1. M. Raghuma Reddy.

LIST OF DOCUMENTS MARKED

FOR RESPONDENTS

1. Ex. B-1 : Proceedings No. ESTT. 11(2), 3256/83 of 25-10-83

For PETITIONER

1. Ex. A-1. Service Register of 13-1-74 the respondent.

2. Ex-A-2 : Entry at Page No. 10 of Ex-A-1
the Director of Agrl. Andhra Pradesh, Hyderabad accepting the resignation of the Respondent with effect 1-3-1983.

3. Ex-A-3 : Entry at Page No. 15 of Ex-A-1.

4. Ex-A-4 : Entry at Page No. 15 of Ex. A.1. 2. Ex. B 2 : Certificate issued by PW1 in ESTT. II(2) 2375/83 issued to the Respondent with effect from 1-3-1983.

6-1-84

5. Ex. A-5 : Entry at Page No. 14 of Ex. A-1. 3. Ex. 5-3 : Paragraph No. 2 in Note File ESTT. II 3256/83.

6-1-84

6. Ex. A-6 : Letter addressed by RW1 to PW1 to accept 4-6-83 his resignation.

7. Ex. A-7 : Memo issued by PW1 to the RW1. 16-6-83

8. Ex. A-8 : Letter of reply given by RW. 1 to P.W. 1 Pursuant to Ex. A-7.

9. Ex. A-9 : Surety bond executed by Sri G. Mohan Reddy 22-6-83 and another.

10. Ex. A-9(a) : Signature of RW. 1 in Ex. A-9. 22-6-83

11. Ex. A-10 : Memo issued by PW1 to RW-1. 14-7-83

12. Ex. A-11 : Reply given by RW1 to PW. 1. 20-8-83

13. Ex. A-12 : Proceedings of P.W. 1 accepting the resig- 25-10-1983 nation of the respondent.

14. Ex. A-13 : Letter addressed by the Block development officer, 8-5-84 Amangal to the Joint Director of Agriculture.

15. Ex. A-14 : Letter addressed by the Joint Director of Agriculture to PW. 1. 17-10-85

16. Ex. A-15 : Memo issued by PW. 1 to the Joint Director 6-11-85 of Agriculture, Mahabubnagar.

17. Ex. A-16 : Entire file containing Exhibits A. 6 to A. 15.

18. Ex. A-17 : Voters list of 294 Devarakonda Assembly constituency, Nalgonda District.

J. KRISHNA SARMA, Deputy Registrar.

Sd. Illegible Asstt. Registrar

